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INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

THE UNITED STATES OF AMERICA, THE REPUBLIC OF CHINA,

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

- 1 -

THE UNITED STATES OF AMERICA, et al

- VS -

ARAKI, Sadao, et al

- Defendants -

MOTION

NOW COME the defendants, Hiranume, Kiichiro, Matsuka, Yosuke, Shigemitsu, Mamoru, Togo, Shigenori and Umezu, Yoshijiro, who, appearing specially and for the purposes of this motion only, supplementing the motion heretofore filed by the Japanese counsel, by their American counsel deny the jurisdiction of the Tribunal and move the dismissal of the indictment upon the following additional grounds:

1. That the members of this Tribunal being representatives of the nations which defeated Japan and which are the accusers in this action, a legal, fair and impartial trial is denied to these accused by arraignment before this Tribunal;
2. That war having been recognized universally and in all times as a legal state of relations among nations, counts 1 to 36 inclusive of the indictment, constituting Group One, "Crimes against Peace," charging as an offense the planning, initiating and waging of war, or conspiring to do such acts, state no justiciable crime or offense under international law or otherwise;
3. That war being a state of relations among nations and not among individuals, counts 1 to 36 inclusive of the indictment, constituting Group One, "Crimes against Peace,"

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charging individual defendants with planning, initiating and waging war, or conspiring to do such acts, state no justiciable crime or offense under international law or otherwise;

4. That the obligations, if any, of the treaties, agreements and assurances relating to the planning, initiating or waging of war as alleged in the indictment, being obligations of conscience or at most of contract, the violations of which were not crimes of nations or individuals, counts 1 to 36 inclusive of the indictment, constituting Group One, "Crimes against Peace," state no justiciable crime or offense under international law or otherwise;

5. That killings in the course of belligerent operations being, except insofar as they may constitute violations of the laws or customs of war, a normal incident of war without regard to whether such war be illegal, undeclared, aggressive or in violation of treaties, agreements or assurances, counts 37 to 43 inclusive of the indictment, constituting part of Group Two, "Murder," state no justiciable crime or offense under international law or otherwise;

6. That violations of the laws or customs of war being offenses triable by the military authority of the nation offended against, counts 44 to 50 inclusive and 53 to 55 inclusive of the indictment, constituting part of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge such offenses, state no crime or offense justiciable by this Tribunal;

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7. That the Tribunal's jurisdiction to try and punish "war criminals" being founded upon Japan's capitulation in accordance with the Potsdam Declaration, and upon that Declaration, counts 1 to 55 inclusive of the indictment, constituting Group One, "Crimes against Peace," Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge offenses other than "war crimes" in the general acceptance of that term as of the date of the Potsdam Declaration and the capitulation in accordance therewith, state no justiciable crime or offense under international law or otherwise;

8. That the Tribunal's jurisdiction to try and punish "war criminals" being founded upon Japan's capitulation to the United States of America and the British Commonwealth of Nations, with whom Japan had been at war from 8 December 1941, the Republic of China, with whom Japan had been at war, if at all, from 9 December 1941, and the Union of Soviet Socialist Republics, with whom Japan had been at war from 9 August 1945, counts 1 to 47 inclusive, 51 and 52 of the indictment, constituting Group One, "Crimes against Peace," and part of Group Two, "Murder," insofar as they attempt to charge offenses committed prior to those dates respectively, state no crime or offense justiciable by this Tribunal;

9. That the Tribunal's jurisdiction to try and punish "war criminals" being dependent upon Japan's capitulation putting an end to the state of hostilities theretofore existing, counts 1 to 6 inclusive, 18, 19, 27, 28, 44 to 50

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inclusive and 53 to 55 inclusive of the indictment, constituting parts of Group One, "Crimes against Peace," parts of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge offenses committed against the Republic of China, with the lawfully constituted government of which Japan was not at war during the times mentioned in the indictment, state no crime or offense justiciable by this Tribunal;

10. That the Tribunal's jurisdiction to try and punish "war criminals" being dependent upon Japan's capitulation putting an end to the state of hostilities theretofore existing, counts 1, 4, 5, 15, 23, 33, 44 and 53 to 55 inclusive of the indictment, constituting parts of Group One, "Crimes against Peace," parts of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge offenses committed against the Republic of France, with the lawfully constituted government of which Japan was not at war during the times mentioned in the indictment, state no crime or offense justiciable by this Tribunal;

11. That the Tribunal's jurisdiction to try and punish "war criminals" being dependent upon Japan's capitulation putting an end to the state of hostilities theretofore existing, counts 1, 4, 5, 16, 24, 34, 37, 38 and 44 of the indictment, constituting parts of Group One, "Crimes against Peace," and parts of Group Two, "Murder," insofar as they attempt to charge offenses committed against the Kingdom of

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Thailand, with the lawfully constituted government of which Japan was not at war during the times mentioned in the indictment, state no crime or offense justiciable by this Tribunal;

12. That the Tribunal's jurisdiction to try and punish "war criminals" being dependent upon Japan's capitulation putting an end to the state of hostilities theretofore existing, counts 1, 4, 5, 44 and 53 to 55 inclusive of the indictment, constituting parts of Group One, "Crimes against Peace," parts of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge offenses committed against the Republic of Portugal, with the lawfully constituted government of which Japan was not at war during the times mentioned in the indictment, state no crime or offense justiciable by this Tribunal;

13. That the Tribunal's jurisdiction to try and punish "war criminals" being dependent upon Japan's capitulation putting an end to the state of hostilities theretofore existing, counts 1, 5, 26, 36, 44 and 51 of the indictment, constituting parts of Group One, "Crimes against Peace," and parts of Group Two, "Murder," insofar as they attempt to state offenses committed against the Mongolian Peoples Republic, with the lawfully constituted government of which Japan was not at war during the times mentioned in the indictment, state no crime or offense justiciable by this Tribunal;

14. That since the acts of commission or omission alleged in counts 1 to 47 inclusive and 51 to 55 inclusive of the indictment, constituting Group One, "Crimes against

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Peace," parts of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," occurred while Japan and the other nations involved were at peace, and since such other nations did not treat such acts as crimes, but continued uninterrupted diplomatic relations with Japan, which continuance of diplomatic relations subsequent to such acts constituted a condonation, waiver or bar, they cannot now be treated as crimes, whether of nations or of individuals, and state no crime or offense justiciable by this Tribunal;

15. That since violations of the Covenant of the League of Nations occurring during time of peace were punishable and could have been punished under the provisions of the Covenant, counts 1 to 8 inclusive, 44 and 53 to 55 inclusive of the indictment, constituting parts of Group One, "Crimes against Peace," part of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge such offenses, state no justiciable crime or offense under the Covenant, international law or otherwise;

16. That since violations of the Covenant of the League of Nations occurring during time of peace were punishable and could have been punished under the provisions of the Covenant, by penalties or sanctions which could be, should have been and were invoked only by parties to such Covenant and not by strangers thereto, counts 1 to 8 inclusive, 44 and 53 to 55 inclusive of the indictment, constituting parts of Group One, "Crimes against Peace," part of Group Two, "Murder," and

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Group Three, "Conventional War Crimes and Crimes against Humanity," state no crime or offense justiciable by this Tribunal;

17. That since the Commonwealth of the Philippines is a part of the United States of America, counts 1, 4, 5, 13, 21, 30, 37, 38, 43, 44 and 53 to 55 inclusive, constituting parts of Group One, "Crimes against Peace," parts of Group Two, "Murder," and Group Three, "Conventional War Crimes and Crimes against Humanity," insofar as they attempt to charge offenses against the Commonwealth of the Philippines, are surplusage and should be stricken from the indictment.

WHEREFORE the defendants Hiranuma, Kiichiro, Matsuoka, Yosuke, Shigemitsu, Mamoru, Togo, Shigenori and Umezu, Yoshijiro, pray the dismissal of the indictment and the several counts thereof, together with such other or further relief as may be just in the premises.

HIRANUMA, Kiichiro

by

Samuel J. Kleiman
Samuel J. Kleiman
Captain, AC

TOGO, Shigenori

by

George Yamagata
George Yamagata

MATSUOKA, Yosuke

by

Franklin E. N. Warren
Franklin E. N. Warren,
Major, AC

UMEZU, Yoshijiro

by

Ben Bruce Blakeney
Ben Bruce Blakeney
Major, AC

SHIGEMITSU, Mamoru

by

George M. Furness
George M. Furness
Captain, AC